

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

ANGELA MORRIS	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 03A-07-002 HDR
	)	
DELAWARE VIOLENT CRIMES	)	
COMPENSATION BOARD	)	
	)	
Appellee.	)	

Submitted: November 14, 2003  
Decided: February 26, 2004

Angela Morris, Cheswold, Delaware, *pro se*.

Ralph K. Durstein, III, Esquire, Deputy Attorney General for the State of Delaware,  
Attorney for Defendant Delaware Violent Crimes Compensation Board

**OPINION**

**Upon Appeal from a Decision**  
**of the Delaware Violent Crimes Compensation Board**  
***AFFIRMED***

RIDGELY, President Judge

This is an appeal from a decision of the Delaware Violent Crimes Compensation Board (“ hereinafter Board”) which denied compensation benefits to Appellant Angela Morris. Morris was the fiancé of Celester O. Lewis, Jr. who was killed while a passenger in a vehicle driven by a drunk driver. The Board held that Lewis assumed the risk of injury by riding with an intoxicated driver who he knew or reasonably should have known was drunk or under the influence of alcohol. Because the Board’ s decision is supported by substantial evidence and is free of legal error, it is affirmed.

### **FACTS**

On December 7, 2002 Lewis was a passenger in a car driven by Christopher Allen, who was intoxicated. The undisputed facts are that both men had a blood alcohol level of .24, more than twice the level for a DUI. After the accident, Allen admitted that he and Lewis were drinking before the accident. The accident happened when Allen drove under the influence of alcohol and lost control of the vehicle at highway speed in snow conditions. Lewis was killed after the car rotated 360° and hit a telephone pole. Lewis was not wearing a seatbelt when found and he was pronounced dead at the scene.

### **DISCUSSION**

- A. The Standard Of Review For An Appeal From A Delaware Violent Crimes Compensation Board Hearing Is On The Record.

Any claimant who is aggrieved by the Board’ s decision may appeal to the

Superior Court within 30 days. The appeal is not *de novo*.<sup>1</sup> This Court is limited to reviewing the Board's factual findings and determining whether the Board has abused its discretion or has committed an error of law.<sup>2</sup> The standard of review of factual determinations of the Board is as follows:

“ If there is substantial evidence to support the agency's findings, those findings cannot be disturbed on appeal regardless of whether or not the reviewing Court would have reached a different conclusion from the same evidence. However, when a careful review of the record below does not reveal substantial evidence supporting the administrative body's findings, the findings must be considered arbitrary, and the agency must be reversed for abusing its discretion.”<sup>3</sup>

B. Compensation By The Delaware Violent Crimes Compensation Board is Discretionary And May Be Denied If The Victim Bears Any Responsibility For His Injury Or Death.

The Board has been given liberal discretionary powers by the legislature<sup>4</sup> which are set forth at 11 *Del. C.* §§ 9001-9018. The purpose of Chapter 90 of Title 11 is “ to promote the public welfare by establishing a means of meeting the

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<sup>1</sup>*Liberto v. Delaware Violent Crimes Compensation Board*, 1992 WL 52193, at \*1 (Del. Super. Ct. 1992).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.* at \*2 quoting *Bilinski v. Delaware Violent Crimes Compensation Board*, Del. Super., C.A. No. 81A-FE-14, Bifferato, J. ( November 30, 1981).

<sup>4</sup>*Evans v. Delaware Violent Crimes Compensation Board*, 1986 WL 3972, at \*1 (Del. Super. Ct. 1986).

additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims.”<sup>5</sup> The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount.<sup>6</sup> Additionally, if the victim bears any responsibility for causing his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.<sup>7</sup> A claim may be denied or reduced, if the victim of the personal injury in question substantially provoked or aggravated the incident giving rise to the injury.<sup>8</sup>

In this case, the victim voluntarily entered and remained in the vehicle driven by Christopher Allen who was intoxicated. As both men had been drinking and had a blood alcohol content of .24, there is substantial evidence that Lewis knew or had reason to know that the driver would be driving under the influence with all the risks attendant to that condition.

On the facts of this case, the Board did not err as a matter of law in denying compensation. To the contrary, it is settled that compensation may be denied to passengers of intoxicated drivers. In *Newman v. Delaware Violent Crimes*

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<sup>5</sup>11 *Del. C.* § 9001.

<sup>6</sup>11 *Del. C.* § 9005(3).

<sup>7</sup>11 *Del. C.* § 9006(c).

<sup>8</sup>*Id.*

*Compensation Board*<sup>9</sup>, the Board denied compensation to the claimant because the victim assumed the risk and was contributorily negligent when he participated in a drinking spree and accepted a ride with the intoxicated driver. The denial of compensation was upheld on appeal.<sup>10</sup>

C. Appellant' s Allegations Of Racial Bias Are Unsupported By Fact And Do Not Meet Any of the Requirements For Either A Federal Section 1983 Claim, Nor For Invoking Tort Liability Upon A State Public Officer.

Appellant argues in her Opening and Reply briefs that there was racial bias in determining the outcome of this hearing and request for compensation. No specific allegations have been made either against the Board or any individual. Appellant simply argues that the Board' s decision was biased due to the great weight placed on Officer Rhode' s testimony and the fact that the driver was white and the victim black. Her claim is without merit.

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<sup>9</sup>1993 WL 54447, at \*2 (Del. Super. Ct. 1993).

<sup>10</sup>*Id.*

*Morris v. DVCC Board*  
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## CONCLUSION

There is substantive evidence to support the Board' s decision that the victim, Celester O. Lewis, Jr. contributed to his death by drinking heavily with the driver and then voluntarily entered and remained in the vehicle when he knew or should have known that the driver was intoxicated. Both driver and victim had blood alcohol levels of .24, more than double the limit for driving while intoxicated. There is no evidence of racial bias by the Board. Nor do I find any error of law. Accordingly, the decision of the Board is **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ Henry duPont Ridgely

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President Judge

ds  
oc: Prothonotary  
xc: Order distribution